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c.
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been transferred for execution has jurisdiction to determine an objection of limitation, such as has been raised in the present case; but none of the cases go so far as to exclude the jurisdiction of the Court which passed the decree. In the present case the notice under s. 248 was passed by the Moorshedabad Court, and the judgment-debtor before us also contends that his objection that no service of this notice was made should be heard by that Court. One of the objects of serving such a notice is to enable the judgment-debtor to object to execution of the decree because it is barred by limitation, and therefore we also think that the Moorshedabad Court from which the notice issued would be the proper Court to determine this matter, although it might also have been raised and decided by the Court at Beerbhoom. We may refer to s. 224 (c) under which the Court sending a decree for execution by any other Court is required to send a copy of any order that may be passed for the execution of the decree. In this case we apprehend that the Moorshedabad Court would have sent a copy of the order made by it on receipt of the report of the service of the notice under s. 248. As it has been held that, but for *Mungal Pershad Dichit's* case, execution of the decree is barred by limitation, and that case, in our opinion, does not apply, the order of the lower Court must be set aside and its finding on the actual facts accepted. In substitution for the orders passed, it will accordingly be declared that execution is barred by limitation. The judgment-debtor will receive his costs of all the Courts.

P. O'K.

*Appeal allowed.**Before Mr. Justice Mitter and Mr. Justice Agnew.*

MISRI LAL AND OTHERS (FIRST PARTY, DEFENDANTS) v. MOZHAR
HOSSAIN (PLAINTIFF) AND OTHERS (SECOND PARTY
DEFENDANTS.)^{*}

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April 30.

Mortgage—Mortgage of crops that may be grown upon a certain plot of land, its nature and effect—Transfer of Property Act—Contract Act.

The mortgage of indigo crops that may be grown upon a certain plot of land is a valid transaction.

* Appeal from Appellate Decree No. 1251 of 1885, against the decree of Moulvi Abdul Aziz, Khan Bahadoor, Subordinate Judge of Sarun, dated the 17th of March 1885, affirming the decree of Baboo Nepal Chunder Bose, Munsiff of Sewan, dated the 19th of August 1884.

1886 after taking all the steps available to him, may fail to compel the attendance of his witnesses, and it would be unreasonable to hold in a case of that description that the applicant was not entitled to the remedy by civil suit under s. 77. It seems to us that where it is found that the application was a *bond fide* application under s. 73, and where it does not appear that the applicant abandoned his application, he would not be precluded from pursuing his remedy under s. 77 by a civil suit merely on the ground that no evidence having been adduced by him before the Registrar, the Registrar refused registration.

SAJIBULLAH
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HAZI KHOSH
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We therefore agree with the District Judge in the view he has taken of the provisions of s. 77. The appeal will be dismissed with costs.

K. C. M.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

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May 31.

HURO CHUNDER ROY (DEFENDANT) v. SURNAMYOI (PLAINTIFF).*

Limitation Act, s. 5—Discretion of Court—Appeal out of time, admission of.

Section 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time.

A valued his suit at Rs. 18,000, which was reduced to less than Rs. 5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

Held, that under the circumstances the Court might admit the appeal in the exercise of its discretion under s. 5 of the Limitation Act.

THIS suit, which was instituted in the Court of the Subordinate Judge of Rajshahye, was one for khas possession of certain mouzahs and valued at Rs. 18,000. The Court decreed the claim, but upon the objection of the defendant reduced the value to

* Appeal from Appellate Decree No. 238 of 1886, against the decree of F. J. G. Campbell, Esq., Judge of Rajshahye, dated the 5th of October 1885, affirming the decree of Baboo Promotho Nauth Mookerjee, Subordinate Judge of that district, dated the 20th of December 1885.

Rs. 4,178-10-5 and allowed proportionate costs. The decree was dated the 20th of December 1883. The defendant (judgment-debtor) applied for copies on the 3rd of February and the decree was ready on the 7th; the defendant, on account of the valuation put by the plaintiff at Rs. 18,000, being then under the impression that the appeal would lie to the High Court. On the 17th of March a letter from his Agent at Calcutta reached him at Rajshahye informing him that he was mistaken, and that the appeal would lie to the District Judge. The appeal was filed in the District Court on the 23rd of March. On the above state of facts the appellant prayed for the admission of his appeal which was clearly beyond time.

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The District Judge passed the following judgment, and rejected the appeal with costs: "This appeal is admittedly out of time; but the appellant seeks to have it admitted on an affidavit purporting to account for the delay and of which the sum and substance (all verbiage stripped off) is this simpliciter, that he thought the appeal would lie to the High Court and so delayed filing it in this Court. Giving him credit for so thinking, his mistaken thoughts cannot override the law of limitation."

The defendant appealed to the High Court.

Baboo *Rasbehari Ghose* and Baboo *Girija Sunkur Mozoomdar* for the appellant.

Baboo *Srinath Dās*, Baboo *Gurudas Banerjee* and Baboo *Jogesh Chunder Roy* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows:—

It appears to us that the lower Appellate Court in this case has rejected the appeal as filed out of time and refused to admit it under s. 5, on the ground that a *bond fide* mistake made by the appellant in the respect of the limit of time within which according to law he is bound to file his appeal is under *no circumstances* a valid ground for admitting an appeal under s. 5.

We are of opinion that is not a correct view of the provisions of s. 5. It is for the Judge in each case to exercise his discretion, having regard to the particular facts established before him.

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We upon that ground set aside his order rejecting the appeal and remand the case to him to decide that point again.

We may, however, point out that if the facts stated before us are correct, and if the matter had been left to us to decide, we should have been very much inclined to think that the appeal should be allowed to be filed under s. 5. We may here state the facts that have been stated before us. The decree of the lower Court is dated 20th December 1883; the suit was valued at Rs. 18,000, but on the objection of the defendant the Court decided that the value of the subject-matter of the suit was below Rs. 5,000. The appellant applied for copies on the 3rd of February, the decree was ready on the 7th of February; the appellant being then under the impression that the appeal would lie to the High Court. Then on the 16th of March a letter was received from his agent at Calcutta, informing the appellant that he was mistaken, and that an appeal would lie to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

The costs of this hearing will abide the result.

K. C. M.

Case remanded.

CIVIL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Grant.

BHAIRAB CHUNDRA CHOWDHRI (PLAINTIFF) v. ALEK JAN
 (DEFENDANT).*

1886
 April 28.

Stamp Act, 1879, s. 13—Suit on bond—Stamp, Sufficiency of.

A bond stipulated that for the consideration of a loan of Rs. 80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at Rs. 10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris, at 4 arris per rupee, or its price, Rs. 200 :

Held, that the bond was adequately stamped.

THIS was a reference in a suit which was brought to recover 800 arris of grain, or their value at 4 arris per Re. 1. The Munsiff disallowed the claim as to a moiety on the ground that

* Civil Reference No. 5A of 1886, made by Baboo Baroda Prasanna Shome, Subordinate Judge of Chittagong, dated the 10th of February 1886.

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the plaintiff relies is not valid under the Transfer of Property Act. We are of opinion that the Transfer of Property Act does not deal with a mortgage of this kind. Future indigo crops that may be grown upon a certain plot of land belonging to the mortgagor were mortgaged. A mortgage of this kind does not come within the purview of the Transfer of Property Act. Neither can it be called a pledge of specific moveable property. It is a mortgage of moveable property that may come into existence in future. Such a transaction as this is neither governed by the Transfer of Property Act nor by the Contract Act. The transaction in question is in the nature of an agreement to mortgage moveable property that may come into existence in future. We see no reason to hold that it is not valid. It has been recognized in Courts of Justice in this country; see *Lala Tilockdhari Lal v. Furlong* (1).

We dismiss the appeal with costs.

K. C. M.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

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 May 27.

SAJIBULLAH SIRKAR (DEFENDANT) v. HAZI KHOSH MOHAMED
 SIRKAR (PLAINTIFF).*

Registration Act, ss. 73, 76, and 77—Suit for registration of document.

An application having been made under s. 73 of the Registration Act, the Registrar passed the following order: "All the parties have not appeared, the appeal is struck off. It, however, seems to me that the order of the Sub-Registrar was quite correct." *Held*, that the mere fact of the applicant not having adduced any evidence before the Registrar did not make his order one not refusing registration within the meaning of s. 76; nor was the applicant precluded on that ground alone from pursuing his remedy under s. 77 by a civil suit.

THE suit, out of which this appeal arises, was brought under s. 77 of the Registration Act for obtaining a decree directing the registration of a document alleged to have been executed by the defendant in favor of the plaintiff. The registration of this

* Appeal from Appellate Decree No. 144 of 1886, against the decree of C. A. Kelly, Esq., Judge of Dinagepore, dated the 6th of October 1885, reversing the decree of Baboo Sudhangsu Bhusan Roy, Munsiff of Dinagepore, dated the 1st of August 1885.

(1) 2 B. L. R., A. C., 230.

document was refused by the Sub-Registrar under s. 73. Within 30 days of the order of refusal by the Sub-Registrar an application was made to the Registrar to whom the said Sub-Registrar was subordinate, in order to establish the applicant's right to have the document registered. The applicant, however, did not appear before the Registrar on the date appointed for holding the enquiry into the question whether the document was executed or not, and no evidence having been offered by either party, the application was refused. The plaintiff then, within the time mentioned in s. 77, instituted this suit. The Munsiff was of opinion that the plaintiff was not entitled to institute it under the provisions of s. 77, inasmuch as he had not adduced any evidence before the Registrar to establish the facts required by law to be established. The District Judge being of a contrary opinion, and finding that the document was executed, awarded a decree against the defendant.

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The defendant appealed to the High Court.

Baboo *Josoda Nundun Pramanick* for the appellant.

Baboo *Gurudas Banerjee* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) after stating the facts as above, proceeded as follows :—

In this second appeal it is contended on behalf of the defendant appellant that the Munsiff's view of s. 77 is correct. Section 77 says, omitting the parts which are not material to the question before us, that where a Registrar refuses to order a document to be registered under s. 76, any person claiming under such document may, within 30 days after the making of the order of refusal, institute in the Civil Court a suit for a decree directing the document to be registered. The question therefore is whether there was a refusal by the Registrar to order the document to be registered under s. 76. We are of opinion that the mere fact of the applicant not having adduced any evidence before the Registrar does not make his order one not refusing registration within the meaning of s. 76. The absence of evidence to establish the execution of the deed cannot be a test with reference to the question whether there is or not a refusal under s. 76, because there may be cases in which the applicant,

1886 after taking all the steps available to him, may fail to compel the attendance of his witnesses, and it would be unreasonable to hold in a case of that description that the applicant was not entitled to the remedy by civil suit under s. 77. It seems to us that where it is found that the application was a *bond fide* application under s. 73, and where it does not appear that the applicant abandoned his application, he would not be precluded from pursuing his remedy under s. 77 by a civil suit merely on the ground that no evidence having been adduced by him before the Registrar, the Registrar refused registration.

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Held, that under the circumstances the Court might admit the appeal in the exercise of its discretion under s. 5 of the Limitation Act.

THIS suit, which was instituted in the Court of the Subordinate Judge of Rajshahye, was one for khas possession of certain mouzahs and valued at Rs. 18,000. The Court decreed the claim, but upon the objection of the defendant reduced the value to

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The transaction is neither governed by the Transfer of Property Act nor by the Contract Act; but it is in the nature of an agreement to mortgage moveable property that may come into existence in future.

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MAHOMED ASGAR hypothecated, under a registered bond of the 22nd March 1883, for the sum of Rs. 397, being the price of the seed supplied, 'all the indigo crop that might grow on a certain plot of land during the year in favour of Mozhar Hossain. Subsequently under a bond of the 3rd August he mortgaged the same crop to Misri Lal & Co. Before the expiration of the term of their bond the latter instituted a suit against Mahomed Asgar for the payment of their money, and *pendente lite* obtained an order of Court prohibiting him from removing certain indigo cakes, and under colour of that order conveyed the goods from the debtor's factory to their own godown. Mozhar Hossain now brought a suit against Misri Lal & Co. as the principal defendants, for the enforcement of his lien on the said indigo. The Munsiff found that Misri Lal & Co. had appropriated the indigo which was the subject of the mortgage under the bond of the 22nd March, and being of opinion that the plaintiff by virtue of his hypothecation bond had a prior lien on the produce gave a decree against the principal defendants for the sum stipulated in the bond. On appeal the Subordinate Judge confirmed the decree. On second appeal to the High Court, it was contended *inter alia* that "on a proper construction of the plaintiff's mortgage deed, the lower Courts should have held that no mortgage at all, at least none regarding future indigo, was created in favour of the plaintiff by the deed set up by him, and that the said deed did not create any right in favour of the plaintiff (the deed not being operative as a mortgage deed at all) regarding what is alleged to have been taken by the defendants, so that the plaintiff might be entitled to follow the same in their hands."

The *Advocate-General* (Mr. Paul), Munshi Mahomed Yusuf and Baboo Dwarika Nath Mookerjee for the appellants.

Munshi Serajul Islam for the respondents.

The judgment of the Court (MITTER and AGNEW, JJ.) was as follows :—

It has been contended before us that the mortgage upon which

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the plaintiff relies is not valid under the Transfer of Property Act. We are of opinion that the Transfer of Property Act does not deal with a mortgage of this kind. Future indigo crops that may be grown upon a certain plot of land belonging to the mortgagor were mortgaged. A mortgage of this kind does not come within the purview of the Transfer of Property Act. Neither can it be called a pledge of specific moveable property. It is a mortgage of moveable property that may come into existence in future. Such a transaction as this is neither governed by the Transfer of Property Act nor by the Contract Act. The transaction in question is in the nature of an agreement to mortgage moveable property that may come into existence in future. We see no reason to hold that it is not valid. It has been recognized in Courts of Justice in this country; see *Lala Tilockdhari Lal v. Furlong* (1).

We dismiss the appeal with costs.

K. C. M.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

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THE suit, out of which this appeal arises, was brought under s. 77 of the Registration Act for obtaining a decree directing the registration of a document alleged to have been executed by the defendant in favor of the plaintiff. The registration of this

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